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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CASE NO: CR-03-0226 MHP

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY DELLAS,

Defendant.

**ORDER DENYING MOTION TO
DISMISS**

Defendant moves to dismiss the charges of manufacture and possession of marijuana in this case based on what he claims are violations of his due process and equal protection rights under the Fifth Amendment. His contentions focus on the hackneyed arguments that the government is not justified in placing marijuana in Schedule I of the Controlled Substances Act, 21 U.S.C. §801, et seq.; that marijuana has accepted medical uses; that the legalization or decriminalization of marijuana has occurred in a number of countries and some states; and the other frequently raised arguments in support of the legalization or decriminalization of marijuana. These oft-repeated claims are oft-rejected claims.

Plaintiff characterizes his claims as due process and equal protection claims under the Fifth Amendment. However, no fundamental right is implicated nor is a suspect class targeted. Thus, the test for whether these claims pass constitutional muster is whether the classification bears a rational

1 relationship to a legitimate legislative purpose. In the words of the Supreme Court's decision in
2 Romer v. Evans, 517 U.S. 620, 632 (1996), the question is whether the law or regulation advances "a
3 legitimate government interest, even if the law seems unwise or works to the disadvantage of a
4 particular group, or if the rationale for it seems tenuous." Some cases challenging the federal
5 regulation of marijuana have not necessarily couched the challenge in terms of due process or equal
6 protection language. For example, in United States v. Middleton, 690 F.2d 820 (11th Cir. 1982), the
7 defendant merely argued that the classification of marijuana as a Schedule 1 controlled substance
8 under the Controlled Substances Act, was arbitrary and irrational and, therefore, unconstitutional. In
9 Gonzalez v. Raich, ___ 125 S.Ct. 2195 (2005), the Supreme Court reviewed the same question under
10 the Commerce Clause of the United States Constitution. In both cases the analysis was performed
11 under the rational basis test. The same test applies here.

12 Middleton starts with the premise that federal statutes are presumptively valid unless the
13 enactment "bears no rational relationship to a legitimate legislative purpose." 620 F. 2d at 822. In
14 Raich the Court articulated the inquiry as whether there is a rational basis for finding that the
15 activities affect interstate commerce. The court concluded in Raich that the "enforcement difficulties
16 that attend distinguishing between marijuana cultivated locally and marijuana grown elsewhere...and
17 concerns about diversion into illicit channels" constituted a rational basis for Congress' legislating in
18 this area.

19 Id. at 2208.

20 Defendant argues that it is time once again to look at the validity of the classification of
21 marijuana in view of new scientific and medical information. However, the Supreme Court in Raich
22 thoroughly reviewed the findings of Congress contained in the lengthy legislative history leading up
23 to the adoption of the Controlled Substances Act. The Court concluded that the findings were
24 adequate and also noted that provision was made for periodic updating of the schedules adopted
25 under the Act. Finally, the Court observed that "[d]espite considerable efforts to reschedule
26 marijuana, it remains a Schedule I drug." Id. at 2204.

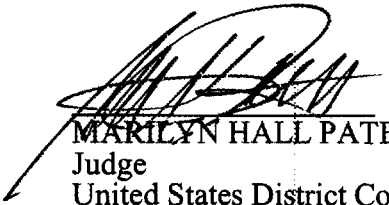
27 The case at bar is another perennial attempt to revisit this issue. The standard of review is the
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1 same; the facts have not changed since 2005 when Raich was decided; the arguments are no more
2 persuasive. Furthermore, the case law does not support plaintiff's position. This Circuit has
3 repeatedly upheld the constitutionality of the federal marijuana laws, reminding us that "[w]e need
4 not again engage in the task of passing judgment on Congress' legislative assessment of marijuana",
5 emphasizing an earlier opinion in which the court had said that "[t]he constitutionality of the
6 marijuana laws has been settled adversely to [defendant] in this circuit." United States v. Miroyan,
7 577 F.2d 489, 495 (9th Cir 1978) (quoting United States v. Rogers, 549 F.2d 107, 108 (9th Cir.
8 1976)). This has been repeatedly reiterated by other circuits. See, e.g., United States v. Kiffer, 477
9 F.2d 349 (2d Cir.), cert. denied, 414 U.S. 831 (1973); United States v. Fogarty, 692 F.2d 542 (8th Cir.
10 1982); United States v. Greene, 892 F.2d 453 (8th Cir. 1989); see also Alliance for Cannabis
11 Therapeutics v. DEA, 15 F.3d 1131 (.D.C. Cir. 1994). Finally, another judge of this district has
12 added a more recent voice to this overwhelming conclusion and denied a similar motion. See United
13 States v. Chan, CR 05-00375-SI (March 20, 2006).

14 For the foregoing reasons defendant's motion to dismiss the charges in this action is
15 DENIED.

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17 IT IS SO ORDERED.

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20 Date: April 6, 2006

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MARILYN HALL PATEL
Judge
United States District Court
Northern District of California